CASES

Relating to the

DUTIES

OF

EXCISE,

And to the Juriſdiction of

Juſtices of the Peace,

Upon INFORMATIONS laid before them for Offences againſt the LAWS of

EXCISE:

And to the Juriſdiction of the Juſtices at the Quarter-Seſſions, relating to APPEALS in Caſes of the Duty upon MALT.

LONDON: Printed in the Year, 1715.

A CASE *and* QUÆRI, *how far Perſons who brew only for Exportation, and are not otherwiſe Common Brewers, are liable to pay the Duties of* EXCISE.

BY Two Acts of Parliament, *viz.* 12 *Car.* 2. *Cap.* 23. and *Cap.* 24. it is enacted, *That for every Barrel of Beer or Ale, above* 6 s. *the Barrel, brewed by the Common Brewer, or any other Perſon or Perſons, who doth or ſhall ſell or tap out Beer or Ale publickly or privately, to be paid by the Common Brewer, or by ſuch other Perſon or Perſons reſpectively, and ſo proportionably,* 2 s. 6 d.

By the Act of 1 *W. & M. Cap.* 22. *Any Perſon may export, as Merchandize, for account of himſelf or any other Perſon, any Strong Beer, Ale, Cyder, Mum, to be ſpent beyond the Seas: And the Commiſſioners of Exciſe and Officers, are to allow or repay the Exciſe thereof to the Brewer or Maker.*

The CASE

A Merchant brews Strong Beer to be exported and ſold as Merchandize, and exports the ſame.

Whether ſuch Perſon be not a Seller of Beer or Ale within the Meaning of the Act of 12 *Car.* 2. *Quæri.*

and liable to make Entry and Payment of all the Drink he brews, drawing back the Duty for that Drink only that he exports, by vertue of the Act of 1 *W. & M.*

I conceive he is liable to pay Exciſe for all the Strong Beer he brews; eſpecially if he frequently and uſually brew for Exportation; and ſhall draw back the Duty for ſo much of it as he exports: For he is a Perſon that ſells Beer, and therefore liable to pay in like manner as a Common Brewer, not only by the Words of 12 *Car.* 2. but by reaſon (his Intent and Purpoſe in brewing, being for Profit to be acquired from Buyers, and not for ſpending or conſuming in his Houſhold) he puts himſelf into the ſame State and Condition as the Common Brewer; does the ſame Work, for the ſame Uſe, and to the ſame End. And the Act of 1 *W. & M.* requiring the Officers of Exciſe to make Allowance, or repay the Exciſe, for ſo much of ſuch Beer as is actually exported, unto the Brewer or *Maker*, implies that ſuch *Maker* was liable to pay Exciſe for all that he brewed, (as well as a Common Brewer.)

April 23. 1692. *Geo. Treby.*

A Case

A CASE *and* QUÆRIES, *how far the making of Low-Wines, and from thence Strong-Waters or Spirits; and the exporting such Strong-Waters,* &c. *as Merchandise, subjects such Makers to the Duties, and obliges them to make Entries.*

BY Two Acts made 12 *Car.* 2. it is enacted, *That for every Gallon of Strong-Water or Aquavitæ made and sold, there shall be paid by the Maker,* 2 d. *viz.* by each Act 1 *d.*

And that all In-keepers, Alehouse-keepers, Victuallers, and other Retailers of Beer, Ale, Cyder, Perry, Metheglin or Strong-Waters, brewing, making or retailing the same, shall once in every Month make true and particular Entries at the Excise Office, within the Limits of which the said Commodities and Manufactures are made, of all Beer, Ale, Cyder, Metheglin, Strong-Waters, or other the Liquors aforesaid, which they or any of them shall brew, make or retail in that Month.

1 *Jac.* 2. An additional Duty was granted in these Words, *viz. For every Gallon of Strong-Waters, Aquavitæ, or Spirits of the second Extraction, made here for sale, to be paid by the Maker,* 4 d. *over and above the Duties of Excise already payable for the same.* This Act expired in the Year 1690.

2 *W. & M.* It is enacted, *That from the* 24th *of* December, 1690, *until the* 25th *of* December,

1695, *there ſhall be paid, for all Low-Wines or Spirits of the firſt Extraction, drawn by Diſtillers, or other Makers of Spirits and Strong-Waters for ſale, within the Kingdom of* England, *Dominion of* Wales, *and Town of* Berwick *upon* Tweed, *the Rates and Duties following,* viz.

For every Gallon of Low-Wines of the firſt Extraction from foreign Materials, or mix'd with foreign Materials, 8 d.

For every Gallon of Low-Wines drawn only from Drink brewed from malted Corn, 1 d.

For every Gallon of Low-Wines drawn from Cyder or Perry, or any mixture therewith, 3 d.

3 *W. & M.* It is enacted, *That if any Common Diſtiller, or Maker of Low-Wines, Spirits or Strong-Waters, ſhall at any time hereafter hide, conceal or convey, any Low-Wines, Spirits, or Strong-Waters for ſale, from the Sight or View of the Gauger, or Gaugers, appointed to take an account of the ſame, whereby their Majeſties ſhall or may be defrauded of any of the Duties due for the ſame. That every ſuch Common Diſtiller, or Maker of ſuch Low-Wines, Spirits or Strong-Waters for ſale, ſo hid, concealed, or conveyed, as aforeſaid, ſhall forfeit the Sum of* 5 s. *each Gallon.*

The Case.

A. B. a Merchant, draws great Quantities of Low-Wines, or Spirits, of the firſt Extraction, and from thence makes or diſtills Strong-Water or Aquavitæ, and exports the ſame as Merchandize, but ſells none in *England.*

Quæri. Whether ſuch Merchant, drawing Low-Wines of the firſt Extraction, and from thence diſtilling, or

or making the ſame into Strong-Water or Aquavitæ, and exporting the ſame as Merchandiſe, tho' he ſells no Strong-Waters, Aquavitæ, or Low-Wines in *England*, ſhall be charged with the Duties by the ſaid Acts, made 12 *Car.* 2. and ſhall make Entry and Payment as thoſe Acts direct?

I am of Opinion that he muſt pay the Duties impoſed by 12 *Car.* 2. upon Strong-Waters; and muſt make Entries according as the Acts direct. For exporting Strong-Waters as Merchandiſe I think will be ſufficient Evidence of ſelling them.

Whether ſuch Merchant ſhall be charged with the Duty on Low-Wines of the firſt Extraction, from which he diſtills or makes the Strong-Water or Aquavitæ he exports, by the ſaid Act made in the 2d Year of *W.* & *M.* and ſhall make Entry and Payment thereof, as above? *Quæri.*

I think he is liable to pay the Duties laid by 2 *W.* & *M.* upon Low-Wines of the firſt Extraction, made for ſale. For I think drawing from them Strong-Waters, &c. and then exporting the Strong-Waters as Merchandiſe, is ſufficient Proof they were made for ſale.

Aug. 6. 1695. *Tho. Trevor.*

A CASE *ſtated on ſeveral Acts of Parliament, relating to the Juriſdiction which Juſtices of the Peace, by vertue of thoſe Acts, have of and concerning Forfeitures incurred by committing Offences againſt thoſe Acts, with* QUÆRIES *thereupon, and the Opinions of Sir* Edw. Northey, *Knight, Her Majeſty's Attorney General, and Sir* Robert Raymond, *Knight, Her Majeſty's Solicitor General, in Anſwer to thoſe* QUÆRIES.

BY 12 *Car.* 2. *Cap.* 23. *Sect.* 31. *Exciſe Book, fo.* 17, 18. It is enacted, *That all Forfeitures and Offences againſt the Laws of Exciſe happening within the Limits of the Chief Office ſhall be heard by the Commiſſioners.*

And all Forfeitures and Offences within any other County, City, Town or Place, &c. *ſhall be heard and determined by* any *two or more Juſtices of the Peace, reſiding near to the Place where ſuch Offence ſhall be committed.*

And in the Stat. 12 *Car.* 2. *Cap.* 24. *Sect.* 44. *Exciſe Book, fo.* 42, 43. The ſame Clauſe is again enacted in the very ſame Words.

The Stat. 15 *Car.* 2. *Cap.* 11. *Sect.* 8. *Exciſe Book, fo.* 61. enacts, *That no Common Brewer or Inn-keeper ſhall have Power to act in, or execute as a Juſtice, any*

any of the Powers in any of the Laws of Exciſe.

And Sect. 22. *Exciſe Book, fo.* 76. *That all Differences, Appeals and Complaints that ſhall happen and ariſe between Party and Party, in order to the Payment of the Duty of Exciſe, ſhall be heard and determined in the proper County, or in the ſeveral Ridings and Diviſions of* Yorkſhire *and* Lincolnſhire, *where they ſhall ariſe, and not elſewhere.*

And Sect. 44. *Exciſe Book, fo.* 77. *That the Juſtices of the Peace, or any two or more of them, or Chief Magiſtrates in the ſeveral Counties, Cities, Diviſions, and Places within* England *and* Wales *reſpectively, ſhall meet once in every Month in their reſpective Diviſions, or oftner if there ſhall be Occaſion, to hear, determine, and adjudge all Matters againſt this or the aforeſaid Acts.*

The ſaid two firſt Acts do not ſay, That theſe Forfeitures, *&c.* in other Counties, Cities, Towns or Places, ſhall be heard by any two or more Juſtices *of* ſuch County, City, Town or Place reſpectively, where ſuch Forfeiture or Offence ſhall be committed; But by *any* two or more Juſtices *reſiding near* to the Place where ſuch Offence ſhall be committed.

And the ſaid Act 15 *Car.* 2. after it has diſabled Brewers or Inn-keepers from acting as Juſtices in Matters relating to the Exciſe, does enact, *That theſe Matters ſhall be heard* in *the proper County, or in the Ridings and Diviſions of* Yorkſhire *and* Lincolnſhire, *where they ſhall ariſe, and not elſewhere.*

Juſtices of the Peace, as to Rates for the Poor, and as to High-Ways, and other Parochial Affairs, generally chooſe to act only in the reſpective Hundreds wherein they dwell; and having on thoſe Occaſions uſed to call each Hundred a Diviſion, ſome from

from thence, and from the before-mentioned Clauſe, appointing theſe Matters to be heard in the reſpective Ridings and Diviſions of *Yorkſhire* and *Lincolnſhire*, and from the Clauſe directing the Juſtices to meet once in every Month in their reſpective Diviſions, have aſſerted, That the Juſtices of one Hundred have not Juriſdiction to hear Matters of Exciſe ariſing in another Hundred.

The Magiſtrates of ſeveral Corporations are by their Charters appointed Juſtices of the Peace within the Limits of their reſpective Corporations, and by virtue thereof do hold Quarter-Seſſions, ſeparate and diſtinct from the Quarter-Seſſions of and for the reſpective Counties in which they are ſituate. And in ſome of their Charters there are expreſs Clauſes excluding the County-Juſtices from acting in Matters (ariſing and happening within thoſe Corporations,) which at the time of ſuch Charters did belong to Juſtices of the Peace.

Notwithſtanding ſuch Charters, the County-Juſtices being Juſtices all over their reſpective Counties, and theſe Corporations continuing to be within and part of thoſe Counties, they (the County-Juſtices) do frequently meet at and in theſe Corporations, and do there hear and determine Matters of the Peace, *&c.* ariſing and happening in other Parts of thoſe Counties, out of the Limits of ſuch Corporations.

All ſuch Charters as before are mentioned, which have hitherto appeared, are dated before the making the ſaid Acts of Exciſe.

If the Juſtices and Magiſtrates of ſuch Corporations happen to be Common Brewers or Innkeepers, they then, by the before-mentioned Clauſe, are diſabled from acting as Juſtices in Matters of Exciſe, ſo that it may and often does happen

happen, that there are not in ſome Corporations two Juſtices qualified to act in Matters of Exciſe; and in many Corporations the Juſtices are but mean Perſons.

If Hearings in Exciſe-Matters are appointed at or near the Place where the Offences are committed, or but at a convenient Diſtance from thence, Is it of any moment of what Hundred the Juſtices are, who are to hear and determine? I. *Quæri.*

May Offences againſt the Laws of Exciſe, committed in ſuch Corporations, be heard and determined indifferently, *viz.* Either by the Juſtices of the County in which ſuch Corporations are, Or by the Juſtices of ſuch Corporations, according as the Informations ſhall happen to be laid: Or is the Juriſdiction in ſuch Caſes reſtrain'd to the Juſtices of ſuch Corporations only? II. *Quæri.*

If any ſuch Charter as before is ſtated, ſhould happen to be dated ſince making the ſaid Exciſe-Acts, Will ſuch Charter ſo dated exclude the Juſtices of the County, in which ſuch Corporation is, from having Juriſdiction in Matters of Exciſe, ariſing within ſuch Corporations? III. *Quæri.*

Mr. At-

Mr. Attorney General his Opinion on the ſaid CASE, *and his Anſwer to the ſaid* QUÆRIES.

To the I. I am of Opinion there is not any Law that reſtrains the Determination of Exciſe-Cauſes to the Juſtices of the Peace of the Hundred within which the Offences are committed.

To the II. I am of Opinion, by the Laws of Exciſe, the Juſtices of the Peace of the Counties have Juriſdiction of Exciſe-Cauſes ariſing any where within the County, and may hear and determine ſuch Cauſes, altho' ariſing within Corporations wherein there are Juſtices of the Peace, and where the Charters are with excluſive Words of the Juſtices of the Peace of the County.

To the III. I am of Opinion ſuch new Charters will not exclude the Authority of the Juſtices of the Peace of the County, their Authority being given them by the Laws and Acts of Parliament relating to the Exciſe.

May 22. 1714. *Edw. Northey.*

Mr. So-

Mr. Solicitor General his Opinion on the ſaid CASE, *and his Anſwers to the ſaid* QUÆRIES.

The Juſtices of Peace of any County, by their Commiſſion, have Juriſdiction through the whole County, and the Diviſions they make among themſelves as to acting in particular Hundreds or Parts, are only for their Conveniency, but don't abridge their Juriſdiction. And therefore I am of Opinion 'tis not of any moment of what Hundred the Juſtices that act live in; but that they have Power to hear and determine Offences againſt the Laws of Exciſe in any other Hundred in the ſame County; and nothing to the contrary can be inferr'd from the Stat. 15 *Car.* 2. *Cap.* 22. *Exciſe Book, fo.* 76. which ſays, *The Juſtices ſhall hear and determine in the proper County, and in the ſeveral Ridings and Diviſions of* Yorkſhire *and* Lincolnſhire.. For Ridings and Diviſions are inſerted in thoſe two great Counties, becauſe the Commiſſions of the Peace are ſeveral in the Ridings in *Yorkſhire* and alſo in *Lincolnſhire*, in reſpect of *Holland*, *&c.* and the County at large. *To the* I.

I am of Opinion, That by vertue of the Acts concerning the Duties of Exciſe, the Juſtices of the Peace of the County at large have Juriſdiction in Cauſes relating to the Duty of Exciſe in Corporations, where there are Juſtices of the Peace appointed by Charter; and that they may proceed upon the Laws of Exciſe, *To the* II.

ciſe, to hear and determine Offences there, as well as the particular Juſtices of the Peace of ſuch Corporations; and that Words in ſuch Charters excluſive of the Juſtices of the Peace of the County cannot exclude them from determining Matters ariſing in the Corporation relating to the Duty of Exciſe.

To the III. I am of Opinion ſuch new Charters cannot reſtrain the Juſtices of the Peace of the County from acting in Corporations in Exciſe-Cauſes, to do which they are impowered by Acts of Parliament, as I ſaid before.

July 7. 1714. *Rob. Raymond.*

A CASE *ſtated upon a Clauſe in the Malt-Act, made in the Twelfth Year of the Reign of Her Majeſty Queen* ANNE.

THE Duty upon Malt, by the before-mentioned Act, and by all the former Malt-Acts, is 6*d. per* Buſhel; for the charging and collecting whereof, the Officers are impowered from time to time, as often as they can, to take Accounts of all Corn wetting or ſteeping, or which has been wetted or ſteeped, in order to the making Malt; and to make Returns of the full and true Quantities of ſuch Corn, as they from time to time find ſo wetting or wetted, or making into Malt. Which Returns are to be Charges upon the Malſters. Act 12 *Annæ* fo. 65.

But

But if Malſters were in all Caſes to pay according to the full Quantities ſo returned, they would then often pay more than 6*d. per* Buſhel; becauſe Corn, when wetting or ſteeping, or after it has been wetted, (if not prevented by ſome Art or Management) will ſwell and riſe to a greater Extent and Bulk, than it will be after it is compleatly made into Malt, and has been dryed on the Kiln. In conſideration of which Swelling and Riſing, and of the difference in the Bulk and Extent of the Corn whilſt it is riſen and ſwoln, and when it has been dryed on the Kiln; And that the Duty might not exceed 6*d. per* Buſhel, the Parliament thought fit to make the following Allowances, *viz.*

If the Charge be made by the Officer whilſt the Corn is in the Ciſtern, &c. *or within thirty Hours after firſt taken out thence, the Malſter out of ſuch Charge is to have an Allowance of four Buſhels out of every twenty Buſhels, and ſo proportionably*, viz. *One fifth part. Act* 12 Annæ *fo.* 70.

And if the Officer's Charge is made after the Corn has been above thirty Hours out of the Ciſtern, then out of ſuch Charge the Malſter is to have an Allowance of ten Buſhels out of every twenty Buſhels, and ſo proportionably, viz. *One half. Act* 12 Annæ *fo.* 73.

Which Allowances are conſtantly made to the Malſters, and are enough to anſwer the riſing and ſwelling of any Corn. For tho' good and heavy Corn will riſe and ſwell more than bad and light Corn, yet theſe Allowances are ſufficient to anſwer the riſing and ſwelling of the beſt Corn, but are more than ſufficient to anſwer the ſwelling of bad Corn; ſo that unleſs an Officer in gauging the Corn

miſtakes the true Quantity thereof, a Malſter cannot be over-charged.

The riſing and ſwelling of Corn, whilſt wetting or after wetted, was the Ground and Inducement to the Parliament, to direct the making theſe Allowances, which were granted upon a Dependance and Expectation, that Malſters would continue to lay and make their Malt, as before the laying on of this Duty they uſed to do. And it was not then foreſeen or ſuſpected, that Malſters would, by any unuſual Methods, force their Corn when making into Malt, to lie cloſer than it uſed to do. But whereas before the granting this Duty, and for ſome-time after, an Officer could eaſily thruſt any ordinary Gauging Rod to the bottom of a Ciſtern or Couch of Corn, ſome time after the laying on of this Duty, the Officers found the Corn in ſome Ciſterns and Couches ſo hard (by having been forced together) that they were obliged to provide Iron Rods, and to uſe Strength, to force them to the bottom of Ciſterns and Couches of Corn: Upon Complaints whereof the Officers were directed, when they found Corn ſo forced together, to meaſure it by the Buſhel, which they accordingly did, and always found that the Quantity by Meaſure, far exceeded the Quantity which by a regular Computation from the Gauge thereof could fairly be charged.

But it being repreſented to the Parliament, that this meaſuring by the Buſhel ſometimes did Damage to the Corn, this Power of meaſuring by the Buſhel was taken away by the Malt Act of 9 *Annæ*. And in that Malt Act there was the like Clauſe, againſt forcing Corn together, as is in the ſaid Act of 12 *Annæ* which Clauſe in 12 *Annæ* Fol. 70. is in the Words following, *viz.*

And

And whereas in making of Malt, practiced before the granting the ſaid Duties, the Barly, or other Corn or Grain, during its ſteeping in the Ciſtern or Uting Fat, did uſually riſe and ſwell ſo conſiderably, that it was thought reaſonable, upon granting the ſaid Duties, in all Charges to be made by the Officers from the Ciſtern or Couch, to allow to the Malſters, upon payment of the Duty, four Buſhels in every twenty Buſhels, and ſo proportionably, upon every greater or leſſer Quantity, in Conſideration of ſuch riſe or ſwelling of the Corn; which Allowances have been, and are made accordingly. And whereas many Malſters or Makers of Malt for Sale, by preſſing, treading, ramming, or other Methods, do now not only make their Corn lie ſo cloſe in the Ciſtern or Uting Fat, and alſo in the Couch, that the riſe or ſwelling as aforeſaid is prevented, but alſo renders it very difficult for Officers to know the true Quantity of the Corn ſteeped or in the Couch, and thereby have the Allowances aforeſaid, though the reaſon of making the ſame is taken away. Be it therefore further Enacted, That if any Malſter or Maker of Malt for Sale, during the Continuance of the Duties on Malt by this Act granted, ſhall tread, ramm, or otherwiſe force together in the Ciſtern, Uting Fat or Couch, any Corn ſteeping or ſteeped, in order to the making into Malt; every ſuch Malſter or Maker of Malt for Sale, ſhall for every ſuch Offence forfeit and loſe the Sum of two Shillings and ſix Pence for every Buſhel of Corn ſteeping or ſteeped, that ſhall be ſo preſſed, trodden, rammed or forced; any thing herein, or in any former Act or Acts contained to the contrary in any wiſe notwithſtanding.

The Malt-Act for the now current Year is with a Reference to the foregoing Clauſe, and all other Clauſes in the ſaid Act of the 12th of Her ſaid Majeſty.

Notwithſtanding which Clauſe, and the like Clauſe in 9 *Annæ*, ſeveral Malſters and their Servants (eſpecially in ſome particular Counties and Places) perſiſting in forcing the Corn together, as they had done before the making the ſaid Clauſes, the Officers often found the Corn as well in Ciſterns as in Couches forced together, and made to be ſo compact and cloſe as did ſufficiently demonſtrate that ſome Means or other had been uſed to make it lie ſo cloſe. And at other times the Officers have accidentally ſeen the Malſters Servants actually treading and forcing the Corn together; and upon ſuch Diſcoveries, Informations for the Penalty in the foregoing Clauſe have been laid before Juſtices of the Peace for the reſpective Counties where ſuch Diſcoveries have been made, (they being by the Malt-Acts impowered to hear and determine theſe Offences.)

And upon hearing ſome of theſe Informations, it has been ſtrongly inſiſted by the Malſters and their Advocates, That this being a penal Law, none ought to be convicted thereon without the moſt plain and poſitive Proof, and that the finding Corn ſo cloſe and hard as before deſcribed was not a plain and poſitive Proof, but was only circumſtantial Proof of the Fact; unleſs the Witneſſes could give Evidence by what particular Means or Method the Corn had been ſo forced together, or had been actually preſent whilſt the Malſter or his Servant was forcing it together.

Nay

Nay, when upon hearing other like Informations the Witneſſes have given Evidence that they actually ſee the Malſters Servants tread or ramm the Corn together; it has in ſuch Caſes been inſiſted on the part of the Malſters, that (on a penal Law) they ought not to be puniſhed for Acts done by their Servants.

Theſe and other ſuch like Objections having been made by Gentlemen of the Law, Juſtices of the Peace in ſeveral Places, for fear of doing Wrong, have been diſſuaded from putting this Act in Execution, and have been induced to acquit ſeveral Malſters who moſt certainly have been guilty within the true Intent and Meaning of this Law, which by theſe Means have been rendred ineffectual, and the Crown has been defeated of great part of this Revenue to the great Prejudice of the Publick, and to the Diſcouragement of ſuch other Maltſters, who not uſing theſe indirect Practices, do actually pay (in Proportion to the Malt they make) more Duty than ſuch as ſo force their Corn together, contrary to the ſaid Clauſe; and by theſe Means this becomes an unequal Tax upon the Malſters.

If poſitive and full Proof be made of Corn lying cloſer than it could or would do, unleſs ſome Means or other had been uſed to make it lie ſo cloſe, Ought ſuch Evidence to be deemed full and poſitive Proof of the Offence meant and intended in and by this Statute, tho' no Evidence be given of the particular Occaſion of ſuch Cloſeneſs, *viz.* Whether it came by preſſing, treading, ramming, or by what other particular Means? And ſhall the Acts of the Servants, in ſuch Caſes, be deemed the Acts of their Maſters? *Quæri.*

I am of Opinion the finding the Malt ſo cloſe, that it could not be ſo without preſſing or ramming, *&c.* is a ſufficient Evidence to prove the Information, and it is all the Evidence that can be expected, and all that the Law requires. For the Officer gives an Account of the Condition he finds the Corn in when he comes to take his Gauge, and it muſt lie on the Malſter to ſhew how it came to lie ſo cloſe; and if he does not, it is an Evidence it was made ſo by him or his Servants, whoſe Acts in this Caſe are his Acts.

May 22. 1714. *Edw. Northey.*

The Malſters having always had, and yet enjoying the Benefit of the before-mentioned Allowances, they ought not only to forbear all indirect Means of preventing the riſing and ſwelling of their Corn, but (to entitle themſelves to theſe Allowances) they ought in Juſtice ſo to lay their Corn, that it might have its full ſcope to riſe and ſwell as it uſed to do before the laying on of theſe Duties; ſuch riſing and ſwelling being the Conſideration and Reaſon of granting theſe Allowances. But it being entirely at the Will and Pleaſure of Malſters to put their Corn into their Ciſterns, *&c.* and to take it out, and lay it in Couches, when and at what Times they think fit, they take Care to do theſe things in the Abſence of the Officers, that they may have no Opportunity to ſee or know how or by what Means the Corn is made to lie ſo cloſe, ſo that if an Information be laid for ramming

ming Corn together, it may upon the hearing ſuch Information appear, That the Cloſeneſs of ſuch Corn was occaſioned by treading, and ſo *vice verſa*. But it appearing by the Preamble to this Clauſe, that the preventing the riſing and ſwelling of the Corn by any Method is the Crime intended to be puniſhed by this Clauſe, and the Words *or otherwiſe force together* being part of this Clauſe.

May not an Information be laid for forcing Corn together, without ſetting forth the particular manner of forcing it together, either by preſſing, treading or ramming? And will ſuch Cloſeneſs of the Corn be ſufficient Evidence to maintain ſuch Information? *Quæri.*

I am of Opinion, if it be apparent that the Corn by Art and Management is made to lie ſo cloſe that the riſe or ſwelling is prevented, it is an Evidence that the ſame was forced together; and an Information may be laid for forcing the Corn together, without mentioning how it was forced together. The Words *or otherwiſe force together* allowing ſuch general Charge, which will be explained by the Evidence; and its lying cloſer together than ordinarily, is an Evidence of indirect Means uſed to force it, which will be ſufficient to convict the Defendant on the Clauſe ſtated.

October 25. 1714. *Edw. Northey.*

A CASE *stated on a Clause in the Malt-Act, made in the First Year of Her Majesty Queen* ANNE, *whereby either Party has Liberty to appeal to the Justices at the Quarter-Sessions, from Judgments given by private Justices on Informations for Offences against the said Malt-Act, with the Opinions of Sir* Edward Northey, *Knight, Her said Majesty's Attorney General, and Sir* Robert Raymond, *Knight, Her said Majesty's Solicitor General.*

IT being enacted by the said Malt-Act, That such Malsters and Makers of Malt as in their Trade do contrary to several Clauses in the said Act, shall be subject and liable to several and respective Fines, Penalties and Forfeitures particularly mentioned in the said Act. *It is thereby further enacted, That all Penalties and Forfeitures imposed by the said Malt-Act shall be sued for, levied, recovered, or mitigated by such Ways, Means, and Methods, as any Fine, Penalty, or Forfeiture may be recovered or mitigated by any Law or Laws of Excise.*

By the Act for the hereditary Excise, *viz.* 12 *Car.* 2. *Cap.* 24. *Sect.* 44. *Excise Book fo.* 42, 43. It is enacted, *That all Forfeitures and Offences against*

gainſt the ſaid Act, happening within the Limits of the chief Office in London, *ſhall be heard and determined by the chief Commiſſioners*, &c. *And that all Forfeitures and Offences committed in any other Counties, Cities, Towns or Places, ſhall be heard and determined by any two or more Juſtices of the Peace, reſiding near to the Place where ſuch Forfeiture ſhall be made, or Offence committed.*

Neither the ſaid Act of 12 *Car.* 2. nor any other Act relating to the Exciſe on Beer, Ale or other Liquors, gives any Appeal to the Quarter Seſſions, from the Judgment of two or more Juſtices, in Matters relating to the Exciſe on Beer, Ale or other Liquors. But by the ſaid Malt Act of 1 *Annæ*, it is enacted, *That if either Party think him or themſelves aggriev'd, by any Judgment or Order to be given or made*, &c. *by any Juſtices of the Peace*, &c. *in purſuance of that particular Act*, (viz. *the ſaid Malt-Act*) *it ſhall and may be lawful, to and for ſuch Perſon*, &c. *to appeal from the ſame to the Juſtices aſſembled at the next Quarter Seſſions of the Peace, to be holden for the County where ſuch Judgment or Order has been made; which ſaid Juſtices of the Peace, or the major part of them, are thereby impowered* to hear, and finally to determine the ſame. *And no Writ of Certiorari ſhall be allowed or brought to ſet aſide any Determination or Order of the ſaid Juſtices.*

Purſuant to this Clauſe ſeveral Perſons, convicted by Juſtices of the Peace of having committed Offences againſt the ſaid Malt-Act, have appealed to the Quarter-Seſſions, where the uſual Method has been to hear the Cauſe over again, and to examine all the Witneſſes, and then to reverſe or affirm the Judgment, according to the Evidence and Merits of each Cauſe. But in ſome particu-

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lar Inſtances, where, upon Appeals at the Quarter-Seſſions, Exceptions have been taken to the Forms of the firſt Judgments given by Juſtices of the Peace, and the Juſtices at the Quarter-Seſſions have been of Opinion that ſuch firſt Judgments were inſufficient and defective in Form, they at the Quarter-Seſſions have for ſuch Defects of Form quaſh'd or reverſed ſuch firſt Judgments, and have not thought fit to hear or examine the Merits or Truth of the Facts alledged againſt ſuch Defendants, apprehending that they having ſo quaſhed ſuch firſt Judgments it was not neceſſary for them to do any thing more, and that the before-mentioned Clauſe did not require them in ſuch Caſes to enter into the Examination of the Merits of ſuch Cauſes. Whereas the foregoing Clauſe impowering the Juſtices at their Quarter-Seſſions *To hear and finally to determine*, ſeems to intend an Examination of the Fact, rather than a critical ſcanning the Form of the Proceedings, and that the Cauſe ſhould be there finally determined rather than that the Proſecutor ſhould be put to lay a new Information, which in many Caſes could not be done; becauſe by other Acts relating to the Exciſe, no Information may be laid before Juſtices of the Peace, unleſs the ſame be laid within three Months next after the time when the Offence was committed, which in many Caſes will be elapſed before ſuch reverſal at the Quarter-Seſſions.

It farther ſeems as if the Makers of this Act foreſaw that the Forms of Judgments by private Juſtices in theſe Cauſes might not be correct enough to bear the nice Examinations of the Queen's Bench, and for that Reaſon have expreſly provided, That in theſe Caſes no *Certiorari* ſhall be allowed or brought, but if the Seſſions are in theſe Caſes to judge

judge by the ſame Rules of Nicety as the Queen's Bench, then that *proviſo* ſeems vain.

Suppoſe therefore, that upon an Appeal to the Quarter-Seſſions, from a Judgment or a Conviction by two Juſtices for an Offence againſt the Malt-Act, ſuch Error or Errors ſhould be found in ſuch Judgment as in the Courts of *Weſtminſter* would be ſufficient to quaſh ſuch Judgment.

Are the Seſſions to judge thereof according to the Niceties obſerved in the Queen's Bench or *Certiorari's*, &c? I. *Quæri.*

And if they are, then

Are they in ſuch Caſe barely to quaſh or reverſe ſuch Judgment or Conviction, and thereby put the Proſecutor to begin all *de novo*, and run the hazard of having a ſecond Judgment quaſh'd for ſome other like Miſtake in Form, and ſo *toties quoties?* II. *Quæri.*

Or are they, after ſuch reverſing ſuch Judgment, to hear the Cauſe, and examine the Evidence; and upon the Juſtice and Merits thereof, either finally to acquit the Defendant, or to give ſuch Judgment as is agreeable to Law, and as ſhould have been given at firſt?

Mr. At-

Mr. Attorney General his Opinion on the ſaid CASE, *and his Anſwers to the ſaid two* QUÆRIES.

To the I. I am of Opinion, the Juſtices of the Peace at their Quarter Seſſions, are not to proceed on ſuch Niceties, as have ſometimes prevail'd in the Courts of *Weſtminſter-Hall*, but only on ſuch Defects which are Subſtance, and hinder the Matter intended to come before them to be ſo, or where the Judgment is contrary to Law; in which caſe the Juſtices may ſet aſide a Judgment, but not ſtop there.

To the II. I am of Opinion on an Appeal, the whole Matter is before the Juſtices, as it was originally before the two Juſtices. And they are to examine, as well the Fact charged in the Information, as the Proceedings of the two Juſtices thereon; and if the Judgment be erroneous, (the Information being good) the Seſſions are to proceed on the Information, and examine the Fact, as if they had had an original Juriſdiction; the whole Juriſdiction by the Appeal being transferred to them.

Mar. 5. 1712. *Edw. Northey.*

Mr. So-

Mr. Solicitor General his Opinion on the ſaid CASE, *and his Anſwers to the ſaid* QUÆRIES.

To the I. In Caſes of Judgments and Orders, *&c.* removed into the *Queen's Bench* on *Certiorari's*, the Court there can't examine into the matter of Fact, but only proceed on the Order, *&c.* returned on the *Certiorari*. But on Appeals from Orders, *&c.* made in Exciſe Cauſes, the Juſtices at the Quarter Seſſions, may re-examine the very Fact, and give Judgment on the Merits. And therefore I am of Opinion, they are not obliged to regard ſuch Niceties as the Court of *Queen's Bench* have ſometimes allowed, but only ſuch Defects as are ſubſtantial.

To the II. If the Information is good, and the Juſtices ſhould reverſe the Judgment for matter of Form, I am of Opinion the Juſtices ought to proceed upon the Information, and examine the Witneſſes and determine the Fact; and thereupon give ſuch Judgment as to them ſhall ſeem juſt.

March 5. 1712. *Rob. Raymond.*

F I N I S.